

STATE OF MICHIGAN
COURT OF APPEALS

DAMIAN LANG,

Plaintiff-Appellant,

v

GREENPOINT MORTGAGE FUNDING,

Defendant-Appellee,

and

CAROL WALSH and STARPOINTE
MORTGAGE,

Defendants.¹

UNPUBLISHED

April 23, 2013

No. 307141

Oakland Circuit Court

LC No. 2010-115921-CH

Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's opinion and order granting summary disposition in favor of defendant, Greenpoint Mortgage Funding. We affirm.

Plaintiff filed a five-count complaint alleging misrepresentation, fraudulent inducement, concert of action, and state and federal statutory violations arising from his purchase of real property located at 23860 Majestic, Oak Park, Michigan from Joe Micallef. Micallef purchased the property for \$110,000 in May 2005. When plaintiff sought to purchase the property, he was given an appraisal for \$140,000 and was purportedly told by the broker, Susan Walsh, that the property must close at that price. Despite the notice of the prior sale for \$110,000, plaintiff proceeded with the purchase.² Therefore, plaintiff agreed to the purchase price of \$140,000.

¹ Greenpoint Mortgage Funding is identified as a division of North Folk Bancorporation. Defendants Susan Walsh and Starpointe Mortgage were never served with the complaint, and they are not parties to this appeal.

² There were irregularities in the documents plaintiff submitted to obtain financing. The documents indicated that plaintiff worked for Micallef, but that was not true. Plaintiff asserted

Defendant approved the mortgage. Approximately one year later, plaintiff was unable to make his mortgage payments and alleged that defendant refused to make accommodations for his loss of employment. The property was foreclosed upon and submitted to sheriff's sale.

Three years later, plaintiff filed this complaint alleging that defendant, Walsh the broker, and Starpointe Mortgage collectively engaged in a process of fraudulent appraisals resulting in higher mortgage interest rates and excessive fees. Defendant moved for summary disposition, alleging that it made no representations regarding the appraisal value and did not pay the broker an improper fee. Plaintiff opposed the motion for summary disposition, alleging that factual issues existed that precluded summary disposition particularly where a state agency found that the appraisal was fraudulent. The trial court granted defendant's motion for summary disposition, holding that plaintiff failed to present documentary evidence in support of defendant's purported misconduct. Plaintiff now appeals.

A trial court's ruling on a motion for summary disposition presents a question of law subject to review de novo. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 317; 783 NW2d 695 (2010). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials LLC v Galui Constr, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id.* "The nonmoving party may not rely on mere allegations or denials in the pleadings." *Id.* The documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). "The affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion." *SSC Assoc Ltd Partnership v Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact." *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995). When the opposing party provides mere conclusions without supporting its position with underlying foundation, summary disposition in favor of the moving party is proper. See *Rose v National Auction Group*, 466 Mich 453, 470; 646 NW2d 455 (2002).

A review of the documentation submitted by the parties reveals that plaintiff was aware of the purchase price of the home in 2005, for \$110,000, and the purchase amount sought in 2006, premised on the \$140,000 appraisal. Despite this knowledge, plaintiff chose to continue with the purchase. Irrespective of the appraisal amount, valuation reflects the probable price that a willing buyer and a willing seller determine in an arm's length negotiation. See *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007).

that he merely signed documents presented to him and assumed that the content was true. Any factual disparity in those documents is not relevant to the issues involving our defendant.

After reviewing the documentation, we conclude that plaintiff failed to meet his burden of presenting admissible evidence to create genuine issues of material fact regarding the elements of the causes of action. *McCoig Materials, LLC*, 295 Mich App at 693. Specifically plaintiff alleged that he was “pressured” to close the sale at \$140,000, the appraisal amount, but defendant was not involved in this transaction other than to provide financing. Plaintiff further alleged that factual issues were established in light of the finding of a fraudulent appraisal. However, a review of this documentation reveals that the state sought the revocation of the license of the appraiser, Durrell W. James, who stipulated to the request by the state agency. Contrary to plaintiff’s contention, there was no finding that our defendant engaged in the practice of fraudulent appraisals or set excessive fees. Similarly, the affidavits filed by plaintiff and Michelle Dickson, a former employee of defendant, failed to create genuine issues of material fact. The affidavits did not set forth with particularity actions by defendant with regard to this transaction. *SSC Assoc Ltd Partnership*, 192 Mich App at 364. Speculation and conjecture will not satisfy the evidentiary proof necessary to prevent the grant of summary disposition. *Cloverleaf Car Co*, 213 Mich App at 192-193. Finally, plaintiff alleged that the attorney for the state would testify regarding the investigation into the appraisal. Despite the close of discovery, an affidavit or deposition testimony by this witness was not presented in opposition to the dispositive motion. Moreover, plaintiff failed to make an offer of proof regarding what this evidence would establish. Accordingly, plaintiff failed to meet her evidentiary burden in opposing the dispositive motion, *McCoig Materials, LLC*, 295 Mich App at 693, and the trial court properly granted defendant’s motion for summary disposition.

Affirmed. Defendant, the prevailing party, may tax costs. MCR 7.219.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto